

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID W. MERROW,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 15-cv-00004-RJB-JRC

ORDER ADOPTING REPORT AND  
RECOMMENDATION TO DISMISS  
PLAINTIFF'S CLAIMS

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 21. The Court has considered the pleadings filed regarding the Report and Recommendation and the remaining file.

In this case, Plaintiff, a *pro se* litigant, seeks judicial review of a final decision of the Commissioner of the Social Security Administration denying his application for disability benefits pursuant to Titles II and XVI.

As stated in the Report and Recommendation, a claimant may obtain review by commencing civil action within 60 days after notice of the decision is mailed to him. Dkt. 21

1 *citing* 42 U.S.C. § 405(h). “This 60-day limit ‘is a condition on the waiver of sovereign  
2 immunity and thus must be strictly construed.’” Dkt. 21 *citing Bowen v. New York*, 476 U.S. 467,  
3 479 (1986). Here, notice of the decision was mailed on October 16, 2014, and although Plaintiff  
4 claims to have received that notice on October 28, 2014, he did not file his complaint until  
5 January 5, 2015. Dkt 21, at 2-3. Plaintiff claims that he was under the impression that he had  
6 been given an extension on the 60 day time limit, but provides no basis for this impression. Dkt.  
7 21, at 2 *citing* Dkt. 20, at 2. This Court is unable to adjudicate Plaintiff’s claim on the merits.

8 Thus, it is ORDERED:

9 (1) This Court ADOPTS the Report and Recommendation (Dkt. 21);

10 (2) Plaintiff’s claims are DISMISSED.

11 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
12 to any party appearing *pro se* at said party’s last known address.

13 Dated this 16<sup>th</sup> day of March, 2016.

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16 ROBERT J. BRYAN  
17 United States District Judge  
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